CHUA CHOON KIAT v. TAN CHONG & SONS MOTOR CO. (S) PTE. LTD.

[O.C.J. (Chua J.) November 1, 1971]

[Singapore — Suit No. 471 of 1970]

Bailments — Bailment for reward — Car stolen while in bailee's custody — Negligence of bailee — Liability of — Onus of proof — Claim of loss of use.

The plaintiff's claim is for $5,685.50, being the purchase price of a car and cost of accessories and $1,605 for loss of use of the said car for 107 days. The car had been left in the defendants' custody and had been stolen whilst in their custody. The defendants conceded that this was a case of bailment for reward and that the onus was on them to show that the damage did not happen in consequence of their neglect to use such care and diligence as a prudent and careful man would exercise in relation to his own property. The issues before the court were whether the defendants had discharged that onus and whether the plaintiff was entitled to his claim for "loss of use of the car".

Held: (1) the onus had not been discharged. The defendants had not taken reasonable care of the plaintiff's car;

(2) the plaintiff not having proved any loss of the use of the car therefore he was not entitled to this claim.

SUIT.

Peter Yap for the plaintiff.

L. A. J. Smith for the defendants.

Chua J.: In this case the claim of the plaintiff is for the sum of $5,685.50 being the purchase price of a car and cost of accessories. The car had been left in the custody of the defendants and had been lost whilst in their custody.

What happened was shortly this. The plaintiff purchased a new car from the defendants, who are car dealers. The car was delivered to the plaintiff on the 10th August, 1969, without window visors. On the morning of the 13th August, 1969, the plaintiff's wife brought the car back to the defendants for the visors to be fitted. The car was left with the defendants. A driver employed by the defendants drove the car to a shop where the window visors were fitted. The driver then drove the car back to the defendants' premises at about 10 a.m. and left it in the showroom, leaving the ignition key in the car. At about 4 p.m. the plaintiff's wife telephoned the defendants about the car and it was then discovered that the car was missing. The car had in fact been stolen.

It is conceded by the defendants that this is a case of bailment for reward and that the onus is on them to show that the injury did not happen in consequence of their neglect to use such care and diligence as a prudent and careful man would exercise in relation to his own property.

The question is have the defendants discharged that onus? I have come to the conclusion that the onus has not been discharged.

The evidence adduced by the defendants was shortly this. New and second-hand cars were kept in the showroom. A clerk has a desk in the showroom and his duties were to deliver cars to customers and to see that the cars in the showroom were properly parked. During the course of the day the cars parked in the showroom would be moved in and out of the showroom or moved from one place to another in the showroom when the necessity arose, on the orders of the clerk. In most cases the cars in the showroom were not locked and the ignition keys were left in the cars. There were two reasons why the ignition keys were left in the cars. First, as a precaution — in case of fire the cars could be moved quickly. Second, for convenience, for shifting the cars around. The chief salesman of the defendants noticed the plaintiff's car parked in the showroom at 10 a.m. The clerk noticed it at 11 a.m. The sales director saw it at 2.40 p.m. The plaintiff's car was stolen between 2.40 and 4 p.m. No one could explain how the plaintiff's car was stolen. The loss of the car was discovered at about 4 p.m. and reported to the sales director who did not go to the police station to make a report until 9 p.m. He was busy working until 8 p.m. and he went home to take a bath before going to the police station.

It is common knowledge that thefts of cars are prevalent in Singapore and have been prevalent for some years and one must view this matter against that background. It would appear that no one kept a watch on the cars in the showroom to see that no unauthorised person drive away the plaintiff's car. The thief's task in this case was made easier by the ignition key being left in the car. In my view the driver of the defendants was negligent in leaving the ignition key in the plaintiff's car. The defendants should have given instructions that ignition keys should not be left in the cars. The defendants had not taken reasonable care of the plaintiff's car.

The plaintiff alleged that there was a breach of duty on the part of the defendants in not reporting the theft promptly. No one knows when the theft occurred. The car was stolen between 2.40 and 4 p.m. The evidence of the O.C., Crimes, Kandang Kerbau Police Station, was this:

"The chances of recovery of a stolen vehicle reported missing within 15 minutes by a determined thief, I would say are rather slim. If he is a determined car thief he would know how to go about his business well and from my experience not only through reports received of this nature through my division but also from reports of similar crimes in other divisions I would say that recovery within minutes of reporting such crime would be more a question of luck."

I am satisfied that the failure of the defendants to report promptly to the police did not cause or contribute to the loss.

The plaintiff also claims the sum of $1,605 for "loss of use of car for 107 days at $15 per day" The plaintiff has not proved any "loss of use of the car" and his evidence on it is very sketchy. In my view he is not entitled to this claim.

I do not think that this is an appropriate case to award interest.

In the result there will be judgment for the plaintiff in the sum of $5,685.50 and costs.

Judgment for the plaintiff.

Solicitors: *S. K. Lee & Co.; L. A. J. Smith*